

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re: Dennis E. Hecker

Case No. 09-50779  
Chapter 7

Debtor.

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BLACKSTONE FINANCIAL, LLC'S PRETRIAL STATEMENT, LIST OF WITNESSES,  
EXHIBIT LIST, TRIAL MEMORANDUM AND PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW REGARDING BLACKSTONE FINANCIAL, LLC'S  
EVIDENTIARY HEARING RELATING TO ITS MOTION FOR RELIEF FROM STAY

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Blackstone Financial, LLC, hereby files this Pretrial Statement, List of Witnesses, Exhibit List, Trial Memorandum, and Proposed Findings of Fact, Conclusions of Law pursuant to this Court's August 26, 2009, Order.

A. **Stipulation regarding admissibility of exhibits and depositions.**

Pursuant to the parties discussions, Blackstone Financial's List of Exhibits, Exhibits 1 - 32 were circulated to the parties and after circulation, Chrysler Financial has withdrawn its objection to Cornerstone's Motion for Relief From Stay. The Trustee was to also withdraw his objection to Cornerstone's Motion for Relief From Stay but has failed to do so as of today's date. It is believed that the Exhibits 1 - 32 were, from discussions, were to be stipulated to regarding admissibility.

B. **Stipulation to facts which are not disputed.** Due to the parties' discussions, and Chrysler Financial's withdrawal of its objections to Blackstone Financial's motion for relief from stay, it was presumed that the Trustee would withdraw his objection to Blackstone Financial's Motion for Relief From Stay. Due to said representations, the parties have not stipulated to any facts that are not disputed. Since

it was believed that the objecting parties, Chrysler Financial and the Trustee, would withdraw their objections to Blackstone Financial's motion for relief from stay.

C. **Witness List.**

It is Blackstone Financial's intentions to call the following witnesses:

1. Dennis White, CEO, Cornerstone Bank, agent for Cornerstone Holdings, Inc., and Blackstone Financial, LLC, 2280 – 45<sup>th</sup> Street SW, Fargo, North Dakota 58104. Dennis White will testify as to the original loan documents between Cornerstone Bank and Dennis Hecker, the documents memorializing the indebtedness, the balance outstanding on the indebtedness, the collateral, and security for said indebtedness, the assignment of said loan documents to Cornerstone Holdings, Inc., and the subsequent agreement between Cornerstone Holdings and Blackstone Financial as to enforcing the obligations assigned to Cornerstone Holdings. Dennis White will testify as to the value of the real estate mortgage granted to Cornerstone Bank to partially secure the indebtedness, the value of Rosedale Dodge's security interests after considering a multitude of financing statements filed by the parties having a similar interest in the collateral, Cornerstone Bank's security interests in the 6 entities, Clearwater Retail Center, LLC; Mikden of Minnetonka, LLC; Mikden, LLC; Mikden of Stillwater, LLC; Michael Holdings of Baxter, LLC; and Mikden of Oakdale, LLC, (hereinafter referred to as the "Hecker 6 Entities") due to the fact that the membership interests have not been certificated, and since the shares have not been certificated Cornerstone's interests in the corporations are superior and paramount to any other party including the Trustee. Dennis White will testify as to the documents received from the "Hecker 6 Entities" the books and records of the Hecker 6 Entities and the value of the Hecker 6 Entities.

Dennis White will also testify as to court documents recently filed regarding litigation commenced against the 6 entities. Dennis White will testify as to the value of Cornerstone Bank will receive from any sale of Hecker 6 Entities.

In case Dennis White is sick or unable to attend the hearing for any reason, Kyle Froslie of Cornerstone Bank will testify as to the same allegations. Kyle Froslie is the vice president of Cornerstone Bank.

Another witness expected to testify is Michael Givens, the 50% owner of the Hecker 6 Entities: Clearwater Retail Center, LLC; Mikden of Minnetonka, LLC; Mikden, LLC; Mikden of Stillwater, LLC; Michael Holdings of Baxter, LLC; and Mikden of Oakdale, LLC. Michael Givens' address is c/o Michael McGraff, Ravoch, Meyer, Kirkman & McGraff, 4545 IDS Center, 80 South 8<sup>th</sup> Street, Minneapolis, Minnesota 55402.

Michael Givens will testify as to his involvement with the Hecker 6 Entities, the status of the Hecker 6 Entities the legal proceedings commenced against the Hecker 6 Entities, verification of the corporate exhibits referenced in the attached Exhibit List, and will testify as to the value, if any, of any equity in the Hecker 6 Entities.

D. **Exhibit List**. Attached hereto is a copy of the Exhibit List containing a description of all exhibits to be offered at trial.

E. **List of depositions to offered at trial**. None.

F. **Trial memorandum**. Blackstone Financial has filed a motion with the Court for relief from automatic stay. Blackstone Financial/Cornerstone Holding is owed in excess of \$3,920,000.00 secured by a real estate in which the real estate is worth approximately \$600,000.00 and \$300,000.00 for the value of any equity in the

Hecker 6 Entities. The Hecker 6 Entities are Clearwater Retail Center, LLC; Mikden of Minnetonka, LLC; Mikden, LLC; Mikden of Stillwater, LLC; Michael Holdings of Baxter, LLC; and Mikden of Oakdale, LLC. Blackstone Financial's interests in the Hecker 6 Entities is derived by its security interests in Dennis Hecker's general intangibles. The Hecker 6 Entities, Clearwater Retail Center, LLC; Mikden of Minnetonka, LLC; Mikden, LLC; Mikden of Stillwater, LLC; Michael Holdings of Baxter, LLC; and Mikden of Oakdale, LLC., have failed to certificate the membership interests in the corporation, Dennis Hecker's interests in the corporations are subject to Blackstone Financial's security interest in general intangibles. Chrysler Financial has a security interest in general intangibles and investment property. Chrysler Financial is owed in excess of \$484,000,000.00. There is no doubt that there is no equity in the Hecker 6 Entities either pursuant to security agreement of Blackstone Financial or security agreement of Chrysler Financial. Since there is no equity in the entities, and Dennis Hecker is not seeking to reorganize, the Hecker 6 Entities are not necessary for the Debtor's effective reorganization.

Chrysler Financial has withdrawn its objection to Blackstone Financial's Motion for Relief From Stay. The Trustee was to withdraw his objection to Blackstone Financial's motion for relief from stay. Case law provides that Blackstone Financial's interest in Dennis Hecker's general intangibles extends to un-certificated interests in Hecker 6 Entities.

Title 11 U.S.C. § 362(d) provides in pertinent part:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay –

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;
- (2) with respect to a stay of an act against property under subsection (a) of this section, if –
  - (A) the debtor does not have an equity in such property; and
  - (B) such property is not necessary to an effective reorganization;

The Debtor is indebted to Blackstone Financial, LLC, pursuant to Promissory Note executed by Dennis Hecker and Security Agreement executed by Dennis Hecker granting Blackstone Financial, LLC, a security interest in general intangibles and accounts which extend to the Hecker 6 Entities. The total amount of the indebtedness exceeds \$3,096,000.00. It is estimated that the value of the Hecker LLCs and MH Claim interest is less than \$750,000.00. The entities in which Blackstone Financial, LLC, seeks to enforce its security interest in the unissued membership units/shares of stock of corporations in which Dennis Hecker has an ownership interest in have not filed for bankruptcy relief.

The Debtor has not made any offers of adequate protection to Blackstone Financial, LLC. Cause exists for granting Blackstone Financial, LLC relief from the

automatic stay. The Debtors is not seeking reorganization. The Hecker LLCs have not filed for bankruptcy relief. The Debtor has no equity in the same.

Blackstone Financial, LLC, asserts that its security interests in the uncertified membership interests of Dennis Hecker in the Hecker LLCs are superior and paramount to any interests of the Trustee and are validly perfected. Pursuant to the decision rendered in Williams v. Indi-Bel, Inc., 167 B.R. 7 (Bankr. N.D. Miss. 1994) (citing *In re Wholesale Warehouse, Inc.*, 141 B.R. 59 (Bankr.D.N.J.1992) and cases cited therein), creditor's security interest in general intangibles perfects a security interest in stock or stock subscriptions which have not been issued. See also Minn. Stats. Chapter 336.

G. **Proposed Findings of Fact, Conclusions of Law.** See attached proposed Findings of Fact and Conclusions of Law.

Dated this 15<sup>th</sup> day of September, 2009.

/s/ Brad A. Sinclair

Brad A. Sinclair (MN#161652), of  
SERKLAND LAW FIRM  
10 Roberts Street  
P.O. Box 6017  
Fargo, ND 58108-6017  
(701) 232-8957  
ATTORNEYS FOR BLACKSTONE  
FINANCIAL, LLC

**BLACKSTONE FINANCIAL, LLC'S EXHIBIT LIST**

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P/D NO.	DATE	WITNESS	DESCRIPTION	O F F E R E D	O B J E C T I O N	R E S E R V E D	O V E R R U L E D	S U S T A I N E D	R E C E I V E D	
1			Blackstone Financial, LLC's Notice of Hearing, Motion for Relief From Stay and Abandonment							
2			Blackstone Financial's Memorandum in Support of Motion for Relief From Automatic Stay and Abandonment							
3			Promissory Note #210123 dated 12/15/08 payable in the principal amount of \$3,000,000.00 executed by Rosedale Dodge, Inc., and Dennis Hecker							
4			Commercial Security Agreement dated 12/15/08 executed by Rosedale Dodge, Inc., and Dennis E. Hecker							
5			UCC Financing Statement filed against Rosedale Dodge and Dennis Hecker filed January 19, 2009							
6			December 15, 2008, Real Estate Mortgage executed by Jacob Holdings of Stillwater, LLC, the maximum indebtedness of \$3,000,000.00							

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7			Affidavit of Dennis White for Blackstone Financial's Motion for Relief From Stay						
8			Real Estate Tax Statement for real estate described at 22510 and 22552 Everton Avenue North, Forest Lake, Minnesota						
9			UCC Search regarding Rosedale Dodge, Inc.						
10			UCC Search regarding Dennis Hecker						
11			Owners & Encumbrance Report for the real estate known as 22510 Everton Avenue North, Forest Lake, Minnesota 55025						
12			Copy of Chrysler Financial's Objection to Blackstone Financial, LLC's Motion for Relief From Stay						
13			Litigation commenced by <u>First Bank v. Dennis Hecker</u> evidence by Summons and Complaint dated April 6, 2009, seeking to enforce Personal Guaranties and Promissory Note regarding indebtedness in excess of \$4.1 million						

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14			Copy of Summons and Complaint commenced against Mikden of Oakdale, LLC, Michael Givens and Dennis Hecker seeking to enforce a Real Estate Mortgage and personal judgment against Mikden of Oakdale, LLC, Michael Givens in the amount in excess of \$1.4 million						
15			Trustee's Response to Blackstone Financial's Motion for Relief From Automatic Stay						
16			Summons and Complaint for real estate foreclosure and a personal judgment against Michael Holdings of Baxter, LLC, Michael Givens and Dennis Hecker in the amount of \$6,600,000.00						
17			Consolidated Financial Statements of Mikden Properties						

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18			Combined Financial Statements of various entities providing calculation of Value of Membership Interests							
19			Various corporate documents of Clearwater Retail Center, LLC, including Action of Organizer, Articles of Organization, Written Action in Lieu of Organizational Meeting, and Operating Agreement							
20			Various corporate documents of Michael Holdings of Baxter, LLC, including Action of Organizer, Written Action in Lieu of Organizational Meeting, Subscription for Units, Joint Written Action of the Board of Governors and Members, and Operating Agreement (Bylaws)							
21			Various corporate documents of Mikden, LLC, including Articles of Organization, Action of Organizer, Written Action in Lieu of Organizational Meeting, Operating Agreement, Membership Interest, and Resignation							

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22			Various corporate documents of Mikden of Minnetonka, LLC, including Action of Organizer, Written Action in Lieu of Organizational Meeting, Articles of Organization, Operating Agreement (Bylaws), and Record of Unit Certificates Issued							
23			Various corporate documents of Mikden of Oakdale, LLC, including Articles of Organization, and Operating Agreement							
24			Various corporate documents of Mikden of Stillwater, LLC, including Action of Organizer, Written Action in Lieu of Organizational Meeting, Articles of Organization, and Operating Agreement (Bylaws)							
25			Property Tax Statement regarding Mikden of Stillwater, LLC, and various information regarding Herberger's Stillwater, Minnesota							

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26			Mikden of Oakdale, LLC, Tax Statement and various information regarding real estate listing of corporation for sale							
27			Mikden, LLC, Tax Statement and various information regarding real estate listing of corporation for sale							
28			Michael Holdings of Baxter, LLC, tax statements and various information regarding real estate listing of corporation for sale							
29			Clearwater Retail Center, LLC, tax statements and various information regarding real estate listing of corporation for sale							
30			Mikden of Minnetonka, LLC, tax statements and various information regarding real estate listing of corporation for sale							

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31			Assignment of Cornerstone Bank's Interest in Promissory Note #210123 dated 12/15/08 payable in the principal amount of \$3,000,000.00 executed by Rosedale Dodge and Dennis Hecker to Cornerstone Holdings, Inc.						
32			Agreement Between Cornerstone Holdings, Inc., and Blackstone Financial, LLC, regarding collection of indebtedness for Cornerstone Holdings, Inc.						

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re: Dennis E. Hecker

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Debtor.

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FINDINGS OF FACT, CONCLUSIONS OF LAW

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Blackstone Financial, LLC, filed a motion for relief from the automatic stay dated July 16, 2009. Chrysler Financial and the Trustee filed objections to Blackstone's motion for relief from stay. A preliminary hearing was conducted on August 24, 2009. This matter was set for final hearing on September 23, 2009.

That prior to final hearing being conducted in this matter, Chrysler Financial has withdrawn its objection to Blackstone Financial's motion for relief from stay. The Trustee has subsequently withdrawn his objection to Blackstone Financial's motion for relief from stay. The court having reviewed the file, pleadings and being otherwise advised;

IT IS HEREBY ORDERED that Blackstone Financial, LLC, is hereby granted relief from the automatic stay to enforce the security interests of Cornerstone Bank and/or Cornerstone Holdings, Inc., assigned to Blackstone Financial for collection in real estate described as follows, see Exhibit A, and to foreclose its interests in Dennis Hecker's interests in various limited liability companies but failed to certificate membership interest or ownership including Clearwater Retail Center, LLC; Mikden of Minnetonka, LLC; Mikden, LLC; Mikden of Stillwater, LLC; Michael Holdings of Baxter,

LLC; and Mikden of Oakdale, LLC, foreclose its interests in all inventory, chattel paper, accounts, equipment and general intangibles of Rosedale Dodge, Inc., and Dennis E. Hecker.

Dated this \_\_\_\_\_ day of September, 2009.

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Judge of the United States Bankruptcy Court

**AFFIDAVIT OF SERVICE**

STATE OF NORTH DAKOTA )  
                                 ) ss:  
COUNTY OF CASS           )

**In Re: Dennis E. Hecker**  
**Bankruptcy Case No.: 09-50779**  
**Chapter 7 Bankruptcy Case**

Sherry Michelson, being duly sworn, deposes and says that she is a resident of the City of Moorhead, State of Minnesota, is of legal age; and that she served the within

- 1. Blackstone Financial, LLC's Pretrial Statement, List of Witnesses, Exhibit List, Trial Memorandum and Proposed Findings of Fact, Conclusions of Law Regarding Blackstone Financial LLC's Evidentiary Hearing Relating to its Motion for Relief from Stay;**
- 2. Blackstone Financial LLC's Exhibit List; and**
- 3. Proposed Findings of Fact, Conclusions of Law**

on September 15, 2009, by placing a true and correct copy in envelopes addressed as follows, to-wit:

Leonard Obrien Spencer Gale & Sayre, Ltd  
100 South 5<sup>th</sup> Street  
Suite 2500  
Minneapolis, MN 55376

Michael B. Lubic on behalf of  
Interested Party Toyota Financial Savings Bank  
Sonnenschein Nath & Rosenthal LLP  
601 S Figueroa St Ste 2500  
Los Angeles, CA 90017-5704

Michael W. Malter on behalf of  
Interest Party John J. Sorci Trust  
Binder & Malter LLP  
2775 Park Avenue  
Santa Clara, CA 95050

Michael D McNair on behalf of  
Plaintiff Vision Bank  
McNair, Larson & Carlson, Ltd.  
Attorney at Law  
51 Broadway, Suite 600  
P. O. Box 2189  
Fargo, ND 58108

Nicholas N. Nierengarten on behalf of  
Plaintiff Chrysler Financial Services Americas LLC  
Gray, Plant, Mooty & Bennett  
500 IDS Center  
80 S 8th St  
Minneapolis, MN 55402

and depositing the same with prepaid postage in the United States mail at Fargo, North Dakota.

The following parties were served automatically by the United State Bankruptcy Court at the following e-mail addresses:

Kendall L. Bader on behalf of Debtor Dennis Hecker	kbader@fredlaw.com, klbader@yahoo.com
Patti H Bass on behalf of Interested Party HSBC Bank Nevada, N.A.	ecf@bass-associates.com
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Gordon B. Conn on behalf of Trustee Randall Seaver	conn@kwgc-law.com
Clinton E. Cutler on behalf of Debtor Dennis Hecker	ccutler@fredlaw.com, mdavis@fredlaw.com
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Connie Lahn on behalf of	connie.lahn@fmjlaw.com,

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Plaintiff Randall Seaver - Trustee

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Defendant Dennis Hecker

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Recovery Management Systems Corp

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Craig E. Reimer on behalf of  
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Services Americas LLC

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Rebecca G. Sluss on behalf of Interested Party Grant Thornton LLP	rsluss@oppenheimer.com
Kathleen K. Statler on behalf of Interested Party ALLIANCE BANK	kstatler@gr-espel.com, storkelson@greenespel.com
Matthew A. Swanson on behalf of Interested Party JPMorgan Chase Bank, N.A.	matthew.swanson@leonard.com callie.sanford@leonard.com
US Trustee	ustpregion12.mn.ecf@usdoj.gov
Nicholas J. Vivian on behalf of Interested Party AnchorBank, fsb	nvivian@eckberglammers.com, dneumann@eckberglammers.com

To the best of affiant's knowledge, the given addresses are the actual post office addresses and e-mail addresses of the parties intended to be so served. The above documents are mailed in accordance with the provisions of the Minnesota Rules of Civil Procedure.

/s/ Sherry Michelson  
Sherry Michelson

Subscribed and sworn to before me this 15<sup>th</sup> day of September 2009.

(Seal)

/s/ Carmen D. Rohr  
Notary Public